Regent Assisted Living, Inc. d/b/a Sunshine Villa *and* Service Employees International Union, Local 415, Service Employees International Union, AFL–CIO. Case 32–CA–21856–1

May 27, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on January 26, 2005, the General Counsel issued the complaint on March 14, 2005, alleging that the Respondent has violated Section 8(a)(1) and (5) of the Act by refusing the Union's request to bargain following the Union's certification in Case 32–RC–5262. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On April 4, 2005, the General Counsel filed with the Board a Motion for Summary Judgment. On April 6, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response, and the General Counsel filed a reply.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contends that the Union's certification is invalid because the Board erred in overruling the objections to the election in the representation proceeding. The Respondent's affirmative defenses essentially argue that the Union was improperly certified, and therefore the Respondent is under no legal duty to recognize or bargain with the Union.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).[1] Accordingly, we grant the Motion for Summary Judgment.[2]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Oregon corporation with its principal office in Portland, Oregon, has been engaged in the operation of assisted living residential facilities in the States of Washington, Oregon, California, Idaho, Utah, and Arizona.

During the 12-month period preceding issuance of the complaint, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of $250, 000, and during the same period, in the course and conduct of its business operations inside the State of California, the Respondent purchased and received goods valued in excess of $5000 that originated from outside the State of California.[3]

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Service Employees International Union, Local 415, Service Employees International Union, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

At all material times prior to October 1, 2004, Renaissance Senior Living Management, Inc. (Renaissance) was engaged in the operation of an assisted living residential facility located at 80 Front Street, Santa Cruz, California (the facility).

[1] Member Schaumber did not participate in the underlying representation proceeding. He agrees, however, that the Respondent has not raised any new matters or special circumstances warranting a hearing in this proceeding or reconsideration of the decision in the representation proceeding, and therefore that summary judgment is appropriate.

[2] Thus, we deny the Respondent's requests that the complaint be dismissed, that the Union's certification be revoked, that the underlying representation petition filed in Case 32–RC–5262 be dismissed with prejudice, and that the Respondent be awarded costs and attorneys' fees.

[3] The Respondent's answer denies the allegation, set forth in paragraph 2(c) of the complaint, that during the 12-month period preceding issuance of the complaint, the Respondent received in excess of $5000 in federal Medicare and/or Medicaid money. In view of the Respondent's admissions of the other jurisdictional facts alleged in the complaint, as found above, the Respondent's denial of complaint paragraph 2(c) does not raise an issue warranting a hearing nor affect our finding that the Respondent is an employer engaged in commerce within the meaning of the Act.

At all material times prior to October 1, 2004, the following employees (the Renaissance unit) constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees employed by Renaissance at the Facility; excluding all managerial and administrative employees, including but not limited to activities director, marketing manager, housekeeping supervisor and administrative assistant, all professional employees, Registered Nurses (RNs), Licensed Vocational Nurses (LVNs), confidential employees, receptionists, office clerical employees, all other employees, guards, and supervisors as defined in the Act.

Following the election held July 9, 2004, in Case 32–RC–5262, the Union was certified on October 29, 2004, as the exclusive collective-bargaining representative of the employees in the above-described Renaissance unit.

At all times after July 9, 2004, the Union, by virtue of Section 9(a) of the Act, was the exclusive representative of the employees in the Renaissance unit for the purposes of collective bargaining.

On or about October 1, 2004, the Respondent assumed the operation of the facility from Renaissance, and since that date the Respondent has continued to operate the facility in basically unchanged form and has employed as a majority of its employees at the facility individuals who were previously employees of Renaissance in the Renaissance unit. Based on these operations, the Respondent has continued the employing entity and is a successor to Renaissance with respect to any bargaining obligation on the part of Renaissance arising from the certification in Case 32–RC–5262.

At all material times since October 1, 2004, the employees in the following unit (the Respondent unit) have constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees employed by Respondent at the Facility; excluding all managerial and administrative employees, including but not limited to activities director, marketing manager, housekeeping supervisor and administrative assistant, all professional employees, Registered Nurses (RNs), Licensed Vocational Nurses (LVNs), confidential employees, receptionists, office clerical employees, all other employees, guards, and supervisors as defined in the Act.

At all material times since October 1, 2004, the Union, by virtue of Section 9(a) of the Act and in light of the successorship circumstances set forth above, has been the exclusive representative of the employees in the Respondent unit for the purposes of collective bargaining.

B. Refusal to Bargain

On or about November 11 and 19, and December 18, 2004, the Union, by letter, requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the Respondent unit. Since December 23, 2004, the Respondent has failed and refused to recognize and bargain with the Union. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSION OF LAW

By failing and refusing since December 23, 2004, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (5) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Regent Assisted Living, Inc. d/b/a Sunshine Villa, Santa Cruz, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Service Employees International Union, Local 415, Service Employees International Union, AFL–CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time service and maintenance employees employed by Respondent at the Facility; excluding all managerial and administrative employees, including but not limited to activities director, marketing manager, housekeeping supervisor and administrative assistant, all professional employees, Registered Nurses (RNs), Licensed Vocational Nurses (LVNs), confidential employees, receptionists, office clerical employees, all other employees, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Santa Cruz, California, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 23, 2004.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 27, 2005

Robert J. Battista , Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Service Employees International Union, Local 415, Service Employees International Union, AFL–CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

All full-time and regular part-time service and maintenance employees employed by us at our Facility; excluding all managerial and administrative employees, including but not limited to activities director, marketing manager, housekeeping supervisor and administrative assistant, all professional employees, Registered Nurses (RNs), Licensed Vocational Nurses (LVNs), confidential employees, receptionists, office clerical employees, all other employees, guards, and supervisors as defined in the Act.

REGENT ASSISTED LIVING, INC. D/B/A SUNSHINE VILLA